## MISCELLANY.

**Advertising in Sunday Newspapers—Work of Necessity—Pulitzer Pub. Co. v. McNichol (Mo.), 181 S. W. 1.**—The publication of a daily paper on Sunday is a work of necessity within Revised Statutes, 1909, section 4801, of Missouri, prohibiting labor on Sunday other than works of necessity, etc., and it is immaterial that the paper contains advertisements and that the labor used in making up, printing and delivering the paper is increased on account of the advertisements, and hence the recovery of a balance due for advertising cannot be defeated on the ground that the papers containing the advertisements were printed, mailed and delivered on Sundays.

This decision finally determines a controversy as to the proper interpretation of the Sunday Law of Missouri upon which the Kansas City Court of Appeals and the St. Louis Court of Appeals had taken conflicting positions. The following is from the opinion of the Supreme Court:

"Moreover, the press is a great educator in literature, art and science, and points out their beneficent influence upon the home, morality and religion; it enables the poor who earn their bread by the sweat of their faces to procure employment, to familiarize themselves with the best and cheapest necessities of life and the most reliable places where they may be procured; it imparts to the business man price currents which largely control the commerce of the world; it informs the financier the rates of items and exchange around the world which keep finances of all nations within conservative bounds, and it makes known to employers of labor the condition of the industrial world, etc., and so on to the end of all good and useful vocations of life. The great service the press is rendering to humanity is performed on Sunday as well as upon Monday, or upon any other day of the week, and its beneficence is more potent on the former than on the latter, for the simple reason that the toiling masses have more time to read the papers on Sunday than upon any other day of the week, and therefore acquire greater knowledge and information from them regarding the matters stated on that day than upon any other day.

"Upon this state of affairs, where is the court or jury in Christendom which would convict the publishers of the Post-Dispatch if judicial notice of the fact that such publications are matters of pubcourse, they do not exist, and that is because the former would take judicial notice of the fact that such publications are matters of public necessity, and the latter would not stultify itself by finding a verdict of guilty against the publishers in the face of overwhelming evidence which would be introduced in such a case. The fact that the paper contained the advertisement, and that a part of the labor

which was used in making it up and printing and delivering it was increased on that account, in no manner altered the case, for the reason that the paper with its advertisements constituted the necessity, and such a paper without them would be practically worthless to thousands in every city."

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**Force in Removing Trespasser.**—While the legal right to remove an intruder or a trespasser by the use of reasonably necessary force is well established, it would seem on many grounds advisable and much more expedient to call in a peace officer to accomplish the expulsion. Thus in Gungrich *v.* Anderson, in the Supreme Court of Michigan (155 N. W. 379), a case of the discharge of a domestic servant, a judgment in favor of the servant and against the master was affirmed on the ground that there was sufficient evidence to support the finding of the jury that plaintiff had not been given reasonable time for removal of herself and her belongings before resort to force to eject her. However, the New York Court of Appeals held in Noonan *v.* Luther (206 N. Y. 105), that "where a domestic employed at a hotel, who had notified her employer that she intended to leave, became involved in a dispute with her employer about her wages, he had the right to order her from the premises, and if, after having afforded her a reasonable opportunity to leave, and while she was behaving in a disorderly manner, she refused to go, he had the right to use reasonable force to remove her" (syllabus). It was further held that in an action by the servant for assault and battery, it was error to refuse to allow the employer to testify that he had no intent other than to remove her from the premises as quietly as possible, using only so much force as was necessary. And in State *v.* Flanagan, in the Supreme Court of Appeals of West Virginia (October, 1915, 86 S. E. 890), the right to use reasonable force to expel a trespasser from one's property was recognized, it being laid down that "the right to eject an intruder is not limited to one's own dwelling house, but applies to any property of which he had lawful possession." In both these instances, the one civil and the other criminal, the property owner who employed force was successful in the legal proceeding.

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**Force in Regaining Possession of Property.**—With regard to using force to obtain possession of personal property, it may be stated that it is well settled that the mere right to the possession of property does not entitle the party to take the same from the one in the actual rightful possession by force or violence. But to recover possession under such circumstances resort must be had to legal proceedings. But where one has the actual right to the possession and obtains possession of the property to which he had the right

of possession from the one actually in possession, with his consent, he may thereafter maintain his possession by the use of force. See Yale *v.* Seely, 15 Vt. 221.

If one attempts to take or takes another's property from his possession, without right and against his will, the owner or person in charge may protect his possession or retake the property by the use of necessary force. He is not bound to stand by and submit to wrongful dispossession when he can stop it, and he is not guilty of assault in thus defending his right by using force sufficient to prevent the property from being carried away. The converse of this proposition is true: If one has intrusted his property to another, who afterwards honestly, though erroneously, claims it as his own, or claims the right to the possession, the real owner has no right to retake it by force or violence. The law will not permit or tolerate that persons take the settlement of conflicting claims into their own hands. The law gives the right to defend possession of property, but not the right to redress for the wrongful taking. The general rule is that a right of property merely, joined with right of possession, will not justify the owner in committing an assault and battery upon the person in possession for the purpose of regaining possession, although the possession is wrongfully withheld. Barnes *v.* Martin, 15 Wis. 240, 82 Am. Dec. 670; Bliss *v.* Johnson, 73 N. Y. 529.

Furthermore, it has been further held that if the property was rightfully in the possession of another than the owner at first, and such possession had been surrendered to the owner, the owner had the right to maintain that possession after it was so acquired against everyone else (see Johnson *v.* Perry, 54 Vt. 459).

The comparatively recent decision of the Supreme Court of Iowa in Biggs *v.* Seufferlein (164 Ia. 241, L. R. A., 1915F, 673), is instructive. It was held that "the assistant of a merchant who, having sold a stove on the installment plan, has entered the customer's house to reclaim it as authorized by the contract upon default in payment, and has taken possession of the property by consent of the purchaser, is not guilty of assault in removing the purchaser from the stove, upon which plaintiff has sat down in an effort to regain the possession and prevent the removal, if no more force is used than is necessary to effect that result." A valuable note to this case in the volume of Lawyers' Reports Annotated above cited summarizes several decisions holding that it is not lawful to use force in the first instance in retaking property sold conditionally, pointing out that the decision in Biggs *v.* Seufferlein passes upon "the right to maintain possession of property where the right to take it has been granted, and so is distinguishable from the cases above cited in this note."

**Trial—Method of Obtaining Verdict.**—In Gutfreund *v.* Williams, in the Supreme Court of Iowa (November, 1915, 154 N. W. 753), it was laid down that while a quotient verdict is improper, a verdict provisionally determined by striking an average of the opinions of the twelve jurors, without any agreement to make the amount so arrived at binding, is not invalid. The court said:

"Neither the nature of the action nor the issues involved on the trial is disclosed in the abstract. The verdict was for $104.83, and it is said that the jurors in arriving thereat were guilty of misconduct in that they returned a quotient verdict. Six of them made affidavit that:

" 'We first agreed that each juror would mark down a certain sum which they thought the plaintiff was entitled to recover as his measure of damages and divide the sum by 12. That said agreement was first entered into and agreed to by all the jurors, and then each juror named his amount and placed on a piece of paper an amount he thought the plaintiff was entitled to recover, then adding all together and dividing the said sum by 12, then adding interest at 6 per cent. That this method of arriving at our verdict was adopted with a result as shown by our verdict returned in said cause.'

"The jurors making the affidavit were brought before the court and two of them examined orally. One of these testified that the total amount of the sums set down by the jurors, divided by 12, was from $102 to $108; that they then discussed the amount, some regarding it too high and others too low, and that they finally agreed upon $100, and to this added interest from May 22d; that in this way the verdict was arrived at; that there was no agreement in advance by the jurors to be bound by the result attained. The other juror testified substantially the same, saying the quotient was over $100, but that upon discussion the jurors agreed upon $100 and added the interest in making up the verdict returned. Thereupon the judge overruled the motion without calling other jurors. It will be observed that the affidavit does not assert that there was an agreement in advance to be bound by the quotient resulting from dividing the total amount of the several sums written by 12, and the testimony of the two jurors leaves no doubt but that there was a discussion and a subsequent agreement to return a verdict for less than the quotient, and that such a verdict was in fact returned. The verdict then was not what is known as a 'quotient verdict,' but was deliberately agreed upon by the several jurors subsequent to the computation, and at a lesser amount than the quotient. The law does not prescribe the manner in which the jurors shall reach their verdict. Any method not inimical to law, and which leaves each juror free to express his own conclusion, is not condemned. To ascertain the average of the amounts thought by the several jurors to be just is

not illegal if they do not bind themselves in advance to return a verdict in such average. Each juror must be left free to vote as he may choose thereafter. It is only when to the method pursued in this case is added the objectionable feature of agreeing in advance that the quotient shall be the amount of the verdict that this is condemned, and so for the reason that it exacts concurrence of the jurors in a verdict which in the nature of things is unknown to any of them at the time the agreement is entered into. (Barton *v.* Holmes, 16 Iowa, 252; Hoover *v.* Mapleton, 110 Iowa, 571, 81 N. W. 776; Sylvester *v.* Casey, 110 Iowa 571, 81 N. W. 455; Peterman *v.* Jones, 94 Iowa 591, 63 N. W. 338; Schanler *v.* Porter, 7 Iowa 482; Denton *v.* Lewis, 15 Iowa 301; Fuller *v.* Railway, 31 Iowa 211; Manix *v.* Maloney, 7 Iowa 81).

"The subsequent vote was not by way of ratification of what had been agreed upon in advance, as counsel contend, for there had been no understanding in advance that the several jurors should be bound by the quotient ascertained as explained (see Thompson *v.* Perkins, 26 Iowa 487; Hamilton *v.* Railway, 36 Iowa 31)."

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**Damage for Sale of Drug to Minor Child.**—In Tidd *v.* Skinner, in the Supreme Court, Appellate Division, Third Department (January, 1916, 156 N. Y. Supp. 885), it was unanimously held that evidence that plaintiff's minor son was employed at a wage of $50 per month, and earned as much as $15 per week singing, and aided his mother greatly, but that defendant druggist sold him heroin for a long time, causing him to become a vagabond, idler, drug fiend and criminal, shows such damages to plaintiff as entitle her to recover from defendant for the sales of the drug, and that such recovery may include punitive damages. The following is from the opinion:

"The action is said to be a novel one. In some respects this is true, although the principle on which the cause of action is based is not novel, but has been known and recognized by the course for centuries. By whatever name this action may go, the fact is that the property rights of the plaintiff have been trespassed upon and she is simply suing for reimbursement. The services of her son, to which she was legally entitled, have been destroyed, so she alleged, and so the jury has found, and she is only asking pay for this damage done. The plaintiff bases her claim upon the same principle which underlies the cause of action accruing to a father in case of the abduction of his daughter, or to a husband in case of the alienation of his wife's affections. Precedent is not necessary in order that the plaintiff may recover here. If the rights of the plaintiff have been invaded, there must be redress. But there is a precedent, an adjudicated case closely resembling this, in Hoard *v.* Peck (56 Barb. 202). It is this case that we are following in our deter-

mination here. But it is said that Hoard *v.* Peck is not just like this case. No two cases are just alike. Facts usually differ; principles are eternal."

Hoard *v.* Peck (supra) was a suit by a husband against a druggist to recover damages for selling to the plaintiff's wife secretly, from day to day, large quantities of laudanum, to be used by her as a beverage, and which was so used by her to the defendant's knowledge, without the consent of the plaintiff, the druggist "well knowing that the same was injuring and impairing her health, * * * in consequence of which use by her the wife became sick and emaciated, and her mind was affected, so that she was unable to perform her duties as such wife, and her affections became alienated from her husband, and he lost her society, and was compelled to expend divers sums of money in medical and other attendance upon her." It was held that an action by the aggrieved husband would lie against the druggist. This seems to have been the pioneer case upon the subject, but it has been followed by Holleman *v.* Harward (119 North Carolina 150), an action by a husband, and Flandermeyer *v.* Cooper, in the Supreme Court of Ohio (98 N. E. 102), an action by a wife. In view of these three decisions it may be regarded as quite well established that liability for indirectly causing loss of consortium will lie through furnishing a pernicious drug for the indulgence of a habit to a spouse, especially if such sales continued after warning and protest by the plaintiff, the other spouse.

The decision in the principal case is novel only in the sense that it extends the principle of Hoard *v.* Peck and the other earlier authorities to a case involving not the relation of husband and wife, but that of parent and minor child. Hoard *v.* Peck (supra) was decided in 1867, and an objection was then urged that the sale of laudanum was not unlawful. Whatever force there was in that objection has now been obviated by statute in most states. On the question of punitive damages the following language from the opinion in the principal case may be of interest:

"At the time of the various sales complained of section 236 of the Public Health Law (Consol. Laws, ch. 45), as it stood at the time of the transactions in question, forbade a druggist to sell morphine or opium or their preparations without affixing to each package sold a label containing the name of the article and the word 'Poison' distinctly written or printed thereupon in red ink. This requirement of the law the defendants wholly failed to observe. Ignoring this statute completely, they sold day after day, week after week and month after month large quantities of this poisonous and ruinous drug to this misguided youth. On one occasion 1,000 pills were sold to him in a week—enough poison to kill many normal people. But notwithstanding this condition of affairs, amply proven at the trial, the defendants complain of the punitive damages which have

been assessed against them. Unless there is either evil intent on the part of the defendant, or a reckless disregard of the rights of others, there can be no punitive damages. The evidence in this case does not go to the extent of establishing an evil purpose to destroy the health and activities of this young man; but the proof does abundantly establish, in our judgment, that the defendants were wholly reckless of the rights of others. It establishes that the defendants, impelled by the instinct for gain and profit, absolutely disregarding the health and future of this young man, and wholly unmindful of the consequences to his parents, sold him this drug and continued to sell it to him long after they discovered its deleterious effects upon his system.

To say that they did this innocently affronts the reason. These defendants were pharmacists, skilled in the science of mixing drugs; they knew their purposes, uses and effects. They knew the subtle, sinister, destructive effect on the human system of this offspring of opium. They knew of its malicious and unconquerable mastery over the human mind—knew of its inexorable demands upon its victims. But it was not necessary to be a pharmacist to know this; every layman knows it. However, in the face of this general knowledge of the baneful effects of heroin, and in the face of their constant daily observation of the actual deadly effects upon the victim whom they were supplying with it, these defendants, actuated only by greed, continued for many months to sell it to this young man and his deluded companions. During the time which these defendants were supplying this drug to the young man he became a vagabond, an idler, a drug fiend and a criminal, undutiful to his mother, worthless to himself, dangerous to the community. The jury was right in concluding that all this was the result of the illicit traffic carried on by these defendants, and that they should be punished for their reckless disregard of the rights and welfare of this boy and his mother."